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07 UNITED STATES DISTRICT COURT
08 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

09 BRYAN F. JENNER,) CASE NO. C07-0550-MAT
10 Plaintiff,)
11 v.) FINDINGS OF FACT AND
12 DE LOS SANTOS CONSTRUCTION, INC.,) CONCLUSIONS OF LAW
et al.,)
13 Defendants.)
14 _____)

15 This matter came to consideration before the Court on August 25, 2008. Defendant De
16 Los Santos Construction, Inc., having previously found to be in default, did not appear for trial.
17 Defendants Nani Fischer and Amelia De Los Santos-Garza also did not appear for trial. Plaintiff
18 waived trial by jury. The trial transcript and exhibits are incorporated by reference into the
19 following FINDINGS OF FACT and CONCLUSIONS OF LAW:

20 FINDINGS OF FACT

21 (1) Plaintiff Bryan F. Jenner was contacted by defendant Nani Fischer to submit a bid for
22 electrical subcontractor services as part of a retrofit of the Portland Naval Reserve Center

01 operated by the Department of the Navy. As an incentive to plaintiff's submitting a bid,
02 Ms. Fischer falsely represented that her company, De Los Santos Construction, Inc., was
03 well-financed, had good credit, and was capable of advancing payment for all supplies and
04 labor costs incurred by plaintiff during the course of performance of the contract. The
05 terms of the contract are set forth in plaintiff's Exhibit 1, although a signed copy was not
06 provided to plaintiff. The effective date of the contract is on or about September 29,
07 2005.

08 (2) After the contract was awarded, and as he began to commence work on the project,
09 plaintiff learned that Ms. Fischer had misrepresented the financial condition of De Los
10 Construction, Inc., and that the company was not capable of financing the project.
11 Although plaintiff secured an alternative source of funding for supplies and labor costs,
12 and although these funds were paid directly to Ms. Fischer, she failed to transfer the funds
13 in a timely manner to plaintiff, and issued checks that were refused by the bank for
14 insufficient funds. In doing so, Ms. Fischer continued to misrepresent the liquidity,
15 capitalization, and financial strength of De Los Santos Construction, Inc. Plaintiff relied
16 on these repeated, material misrepresentations in bidding for the contract, in commencing
17 work, and in completing the contract.

18 (3) Although the project was completed in full by plaintiff in a timely manner, defendants De
19 Los Santos Construction, Inc. and Ms. Fischer failed to make full payment to plaintiff.

20 (4) Defendants De Los Santos Construction, Inc. and Ms. Fischer failed to secure the payment
21 Surety Bond required by the Department of the Navy, which worked to the detriment of
22 plaintiff upon the default of the defendants.

01 (5) The balance owed to plaintiff on the contract is \$24,918.89.

02 CONCLUSIONS OF LAW

03 (1) Plaintiff has proven the liability of De Los Santos Construction, Inc.

04 (2) Plaintiff has proven sufficient lack of respect for the corporate identity to justify holding
05 Nani Fischer personally liable for the corporation's contractual obligations. Sufficient
06 evidence of fraudulent intent, plus the degree of injustice are established. However, the
07 record does not support such a conclusion as to defendant Amelia De Los Santos-Garza.

08 (3) The damages being liquidated, plaintiff is entitled to pre-judgment interest at 12% per
09 annum, plus post-judgment interest from the date of entry.

10 (4) Plaintiff is further awarded his statutory costs of \$350.00.

11 DATED this 27th day of August, 2008.

12 

13 Mary Alice Theiler
14 United States Magistrate Judge